United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

74-1485

ORIGINAL

P/S

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 74-1485

UNITED STATES OF AMERICA ex rel. LARRY DAVID HAYDEN,

Petitioner-Appellant,

-against-

JOHN R. ZELKER, Warden of Greenhaven State Correctional Facility, Stormville, New York,

Respondent-Appellee.

BRIEF AND APPENDIX FOR PETITIONER-APPELLANT

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UNITED STATES COURT OF APPEALS

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UNITED STATES OF AMERICA ex rel. LARRY DAVID HAYDEN,

Petitioner-Appellant,

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BRIEF FOR PETITIONER-APPELLANT

QUESTION PRESENTED

Does Larry Hayden's continued incarceration in a criminal institution for an indefinite period pursuant to a sentence of one day to life deny him equal protection of the laws in light of New York's elimination of such sentences as of 1967, where the only basis for the continued application of such a sentence is that the crime for which it was imposed was committed prior to 1967?

STATEMENT OF THE CASE

This is an appeal from a Decision and Order of the United States District Court for the Eastern District of New York (Constantino, J.) which denied the application of Petitioner-Appellant Larry Hayden for a writ of habeas corpus (Appendix to this Brief, pp. 1a-4a). Judge Constantino thereafter granted a certificate of probable cause and permission to appeal in forma pauperis. This Court assigned counsel to prosecute this Appeal, which is being prosecuted on the original record pursuant to Rule 30(f) of the Federal Rules of Appellate Procedure and Rule 30 of the Rules of this Court.

FACTS AND PRIOR PROCEEDINGS

Larry Hayden is presently serving a sentence of one day to life imprisonment. That sentence was originally imposed on November 20, 1964, by the County Court of Suffolk County, New York, by virtue of his conviction on one count of carnal abuse of a child. Section 483-a of the New York Penal Law, as it existed in 1964, permitted the sentencing court, in its discretion, to impose a one day to life sentence in lieu of the maximum prison term of ten years prescribed by that statute. Section 2189-a of the New York Penal Law, as it existed in 1964, provided that no such one day to life sentence could be imposed without submission to

the court of a complete report of psychiatric examination including "all facts and findings necessary to assist the court in imposing sentence".

On April 10, 1968, the New York Court of Appeals held that the imposition of one day to life sentences pursuant to the New York statutory scheme under which Larry Hayden was sentenced was unconstitutional. People v. Bailey, 21 N.Y.2d 588 (1968). Specifically, the New York Court of Appeals, applying the rule of Specht v. Patterson, 386 U.S. 605 (1967), which had held unconstitutional a similar statutory scheme in Colorado, concluded that Section 2189-a required additional findings of fact independent of guilt before a one day to life sentence could be imposed and that, therefore, a defendant could not be subjected to such a sentence without the right, with the assistance of counsel, to confront and cross-examine witnesses against him. In order to attempt to cure the initial unconstitutionality of the one day to life sentences imposed upon persons like Larry Hayden, the New York Court of Appeals directed that all such persons be given hearings which complied with the due process standards expressed in Specht v. Patterson, supra.

Accordingly, on December 27, 1968, Larry Hayden was granted a writ of error coram nobis and, after four years in prison on the basis of previous psychiatric findings, was resentenced nunc pro tunc to the one day to life

sentence imposed four years earlier pursuant to Sections 483-a and 2189-a of the New York Penal Law of 1909. However, by the time of Larry Hayden's 1968 resentence, the New York Legislature had adopted a new Penal Law, effective September 1, 1967, in the course of which it repealed those sections and completely did away with the one day to life sentence as an alternative to the sentence otherwise prescribed for certain crimes.

After unsuccessfully appealing his resentence to the Appellate Division, People v. Hayden, 33 A.D.2d 656 (2d Dep't 1969), and being denied leave to appeal to the Court of Appeals, Larry Hayden again sought a writ of error coram nobis on the ground that his one day to life sentence denied him Equal Protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution. This application was denied on January 31, 1972, the Court holding that the nunc pro tunc sentence imposed in 1968 properly applied the law as it existed in 1964 and that, in any event, Larry Hayden had no equal protection claim since the crime of carnal abuse had no analogue in the 1967 Penal Law because lack of consent is a specific element of the new crime and was not of the old. People v. Hayden, 68 Misc. 2d 1022 (Suffolk County Ct. 1972). Leave to appeal that decision was denied by the Appellate Division, Second Department, on April 10, 1972.

Having exhausted his New York State remedy, Larry Hayden filed his petition below on July 1, 1972 and it was denied on April 19, 1973. On December 9, 1973, he applied to the District Court for a certificate of probable cause, which was granted on March 29, 1974.

ARGUMENT

THE SENTENCE OF ONE DAY TO LIFE WHICH LARRY HAYDEN IS PRESENTLY SERVING WAS IMPOSED PURSUANT TO A CLASSIFICATION WHICH LACKS ANY RATIONAL BASIS AND DENIES HIM EQUAL PROTECTION OF THE LAWS.

Larry Hayden is the victim of a classification by the State of New York which cannot in fairness withstand the test of the Equal Protection Clause of the Fourteenth Amendment. If he had been sentenced in November 1964 to the ten year maximum sentence prescribed for the crime he committed, he would without doubt have by now been released either on parole or because of good time credit, neither of which can ever be available to him under the sentence he is serving; at the very least, his prison sentence would have expired in November of this year. Similarly, any person committing the crime Larry Hayden committed after September 1, 1967 may be sentenced to a maximum of seven years, N.Y. Penal Law §§ 130.65 and 70.00, and would be eligible for parole and good time credit. However, the alternative one day to

life sentence imposed on Larry Hayden, which could keep him incarcerated in a correctional institution for the remainder of his life, may not be imposed on such persons. Thus, the State of New York is exercising an obsolete statutory alternative to incarcerate Larry Hayden indefinitely without parole or good time credit and without even a maximum term.

The only basis for treating Larry Hayden differently from those who have been convicted of the same crime is that Larry Hayden committed his crime prior to September 1, 1967. This difference is completely without rational basis where, as here, New York has effectively rejected the policy reasons formerly thought to justify creating the special class of convicts in which Larry Hayden finds himself. The New York Legislature having eliminated that special class, effective September 1, 1967, there was no rational basis one year later for the New York courts to consign Larry Hayden, possibly for the remainder of his life, to such a class. His continued loss of liberty as a result of such an irrational classification violates his right to Equal Protection of the laws.

The Supreme Court has frequently recognized that alternative commitments in lieu of sentencing are, at the least, premised on very delicate constitutional foundations. Jackson v. Indiana, 406 U.S. 715 (1972); Humphrey v. Cady, 405 U.S. 504 (1972); Baxstrom v. Herold, 383 U.S. 107 (1966).

This is particularly so in respect to sexual offender statutes where concern for public safety and treatment of the offender are the announced justifications for indefinite detention. Judge Bazelon has aptly described such a commitment as a "status" classification in the nature of that rejected in Robinson v. California, 370 U.S. 660 (1962) and ascribed to such commitments the "constitutional problems" inherent in status classifications:

> "[N]o court can afford to ignore the very real constitutional problems surrounding incarceration predicated only upon a supposed propensity to commit criminal acts. Incarceration may not seem 'punishment' to the jailors, but it is punishment to the jailed. Incarceration for a mere propensity is punishment not for acts, but for status, and punishment for status is hardly favored in our society. In essence, detention for status is preventive detention.
>
> "Only a 'blind court' could ignore the intense debate, in and out of Congress, over the extent to which the Constitution can tolerate preventive detention. Similar questions have been raised sporadically for years, but the problem has rarely been analyzed. It may be that in some circumstances preventive detention is in fact permissible. If so, such detention would have to be based on a record that clearly documented a high probability of serious harm, and circumscribed by procedural protections as comprehensive as those afforded criminal suspects. Detention for any significant period of time would have to be attended by periodic review as well as continuing assurance of bona fide efforts at treatment suited to the particular individual detained." Cross v. Harris, 418 F.2d 1095, 1101-02 (D.C. Cir. 1969). (Footnotes omitted.)

The New York Legislature once thought that certain offenses justified indefinite commitment and created a special

classification for sentencing those who were thought to have that status. The justification for such discriminatory sentencing was in essence the propensity of the person to commit crimes and was articulated in terms of the dual need to protect the public and to provide treatment:

> "An examination of the statutory purpose as well as the weight of judicial authority indicate that the discretion of the sentencing Judge to mete out a one-day-to-life sentence is limited to those cases in which the record indicates some basis for a finding that the defendant is a danger to society or is capable of being benefited by the confinement envisaged under the statutory scheme. Absent such a basis, the sentence cannot stand [citations omitted]." People v. Bailey, supra, at 594.

In adopting the 1967 Penal Law, the New York Legislature discarded the rationale for the discriminatory one day to life sentence. Thus, whatever policy reasons may have once been thought to justify imposing indefinite criminal sentences upon a certain class of people have been rejected in New York. The Legislature has determined that, under the 1967 Penal Law, all persons convicted of a crime should receive a definite sentence and that if preventive detention is thought necessary such persons should be subject to the procedures applicable to all persons.

In short, preventive detention in a correctional institution for an indefinite term is an anachronism in New York. Yet Larry Hayden is incarcerated in such an institution for an indefinite term despite New York's rejection of

the underlying policy reasons for singling out a special class of criminals for such treatment. There is no rational basis for perpetuating such discriminatory treatment against Larry Hayden and other members of the special class in which he finds himself. Indeed, the only basis for such discrimination is inherently arbitrary since it goes, not to the substantive bases for creating the special class in the first place, but only to the point in time when the individual committed a criminal act.

New York has a heavy burden to justify the indefinite incarceration of Larry Hayden in a correctional institution. As the Court observed in Bolling v. Manson, 345 F. Supp. 48 (D. Conn. 1972), in holding unconstitutional the Connecticut statutory system governing good time credit as applied to prevent inmates serving indefinite sentences from earning such credit:

> "In order to be upheld as valid the classification must serve compelling state interests, for it consigns . . . [certain inmates] to lengthier custody and supervision . . . and thus impinges directly on personal liberty, one of the most fundamental rights of the individual." 345 F. Supp. at 51.

In the instant case, we submit that no state interest is served by Larry Hayden's indefinite incarceration in light of New York's rejection of such a status classification as part of its penal system. Continuing to apply such a classification to Larry Hayden solely because of the time when he committed his crime is, we submit, a totally insufficient basis

upon which indefinitely to deny Larry Hayden his liberty. This conclusion is compelled by analysis of the landmark Supreme Court decisions involving persons serving indefinite sentences and in which the Court has found violations of the Equal Protection Clause in distinctions having more substance than the time differentiation New York is using against Larry Hayden and in which the effects of the discriminatory classification were less severe than the loss of liberty he is suffering.

The leading case of Baxstrom v. Herold, 383 U.S. 107 (1966), involved a prisoner who was civilly committed at the end of his maximum prison term under a statutory procedure whereby jury review of his commitment, available to all others civilly committed, was unavailable to him, and whereby a hearing to determine whether he was dangerously mentally ill, necessary for the detention of others civilly committed to a Department of Corrections hospital, was not a requirement for his commitment. The Court rejected the contention that the differentiation was justified because the petitioner was "criminally insane"--that is, found to be insane at the end of his prison term:

> "Equal protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made. Walters v. City of St. Louis, 347 U.S. 231, 237. Classification of mentally ill persons as either insane or dangerously insane of course may be a reasonable

> distinction for purposes of determining the type of custodial or medical care to be given, but it has no relevance whatever in the context of the opportunity to show whether a person is mentally ill at all. For purposes of granting judicial review before a jury of the question whether a person is mentally ill and in need of institutionalization, there is no conceivable basis for distinguishing the commitment of a person who is nearing the end of a penal term from all other civil commitments." 383 U.S. at 111.

The distinction in Baxstrom was also one which, in the final analysis, was based on a time difference, and the Court as a result found the discrimination to be an absurdity:

> "The capriciousness of the classification employed by the State is thrown sharply into focus by the fact that the full benefit of a judicial hearing to determine dangerous tendencies is withheld only in the case of civil commitment of one awaiting expiration of penal sentence. A person with a past criminal record is presently entitled to a hearing on the question whether he is dangerously mentally ill so long as he is not in prison at the time civil commitment proceedings are instituted. Given this distinction, all semblance of rationality of the classification, purportedly based upon criminal propensities, disappears." 383 U.S. at 115.

Thus, Baxstrom holds that the fact that a person is a "criminal" is not a sufficient reason for denying him procedural rights afforded by statute to those committed civilly. In the instant case the discrimination against Larry Hayden is even worse than that against Baxstrom. Here New York is not attempting, as in Baxstrom, to discriminate between criminals and non-criminals; it is discriminating between Larry Hayden and persons committing the same crime after 1967.

Moreover, the criminal propensity rationale, underlying the one day to life sentence and rejected as a sufficient basis for the discrimination against Baxstrom, has been rejected altogether by the New York Legislature since 1967. Finally, not only has the instant distinction less of a rational basis, but also the effect of the discrimination on Larry Hayden is more substantive than was the Baxstrom distinction on Baxstrom. The rights being lost by Larry Hayden are not merely procedural, as in Baxstrom. His incarceration as a criminal could be at an end now if New York had not, in 1968, applied an obsolete statute to continue to classify him according to policies that had been rejected.

In Humphrey v. Cady, 405 U.S. 504 (1972), the invidious discrimination at issue was between persons convicted of sexually motivated crimes, who were committed under the Wisconsin Sex Crimes Act, and persons committed under Wisconsin's Mental Health Act. The discriminatory effect was that the former were denied a jury determination (available to the latter) on whether they should be committed. In rejecting the State's attempted justification of this discriminatory treatment, the Court noted that any policy considerations which might justify alternative classifications in lieu of a definite sentence were applicable only for the duration of the maximum possible definite

sentence;

> "Respondent seeks to justify the discrimination on the ground that commitment under the Sex Crimes Act is triggered by a criminal conviction; that such commitment is merely an alternative to penal sentencing; and consequently that it does not require the same procedural safeguards afforded in a civil commitment proceeding. That argument arguably has force with respect to an initial commitment under the Sex Crimes Act, which is imposed in lieu of sentence, and is limited in duration to the maximum permissible sentence. The argument can carry little weight, however, with respect to the subsequent renewal proceedings, which result in five-year commitment orders based on new findings of fact, and are in no way limited by the nature of the defendant's crime or the maximum sentence authorized for that crime." 405 U.S. at 510-511. (Footnote omitted.)

Here, as in Humphrey, any policy considerations underlying the special classification created by former Penal Law Sections 483-a and 2189-a as an alternative to a definite sentence "can carry little weight . . . with respect to subsequent renewal proceedings . . . based on new findings of fact." Thus, New York's continued incarceration of Larry Hayden beyond the maximum possible definite term provided by law cannot be countenanced either by the fact of his conviction or by the fact that, because he was a "sex offender", the State could provide alternatives to the otherwise prescribed penal sentencing. Indeed, someone committing the same crime after September 1967 has the very same characteristics.

The only remaining basis for New York's continued discrimination against him is its apparent determination to

apply its obsolete statute to cases in which the crime was committed prior to repeal. This distinction has less substance or rational basis than the distinction urged in Humphrey between those who are and are not criminals and sex offenders. As the Court stated in Humphrey, "[t]he equal protection claim would seem to be especially persuasive if it develops on remand [that the discrimination was the result] merely [of] the arbitrary decision of the State to seek his commitment under one statute rather than the other." 405 U.S. at 512. New York made precisely such an arbitrary decision in 1968 when Larry Hayden was resentenced to an indefinite term, at a time when such sentences as alternatives to definite sentences for certain crimes had been eliminated by the Legislature. New York continues to apply such an arbitrary decision every day that Larry Hayden remains incarcerated under a sentence that extends beyond the maximum permissible definite sentence.

The leading case of Jackson v. Indiana, 406 U.S. 715 (1972) compels the same conclusion. There, the patient Jackson (who was committed pre-trial) was subjected to a commitment standard more lenient than those of Indiana's other civil commitment statutes and was subject to a more stringent standard of release. In analyzing the latter point, the Supreme Court cited Baxstrom for the principle that "the State cannot withhold from a few the procedural

protections or the substantive requirements for commitment that are available to all others" (406 U.S. at 727) and again recognized that this principle was equally applicable, as here, "to commitment in lieu of sentence following conviction as a sex offender" (406 U.S. at 724-725). Accordingly, the Court held that Indiana could not apply different standards of release under different statutes providing for indefinite commitment:

> "Baxstrom did not deal with the standard for release, but its rationale is applicable here. The harm to the individual is just as great if the State, without reasonable justification, can apply standards making his commitment a permanent one when standards generally applicable to all others afford him a substantial opportunity for early release." 406 U.S. at 729.

Unquestionably, the harm to Larry Hayden is still greater here where others are in fact released earlier.

In the instant case, New York continues to incarcerate Larry Hayden under an indefinite, possibly permanent, criminal commitment. Yet, according to the legislative policy of New York since 1967, those who are convicted of the same crime serve definite terms with corresponding rights to release at an earlier time--either through good time credit, parole or completion of their maximum term. Denial of these rights to Larry Hayden for no other reason than the time differentiation described above is, we submit, a clear denial of his right to equal protection of the laws.

The denial of relief to Larry Hayden by the Court below was based upon its application of Section 5.05(3) of the 1967 New York Penal Law without reference to any of the principles or cases discussed above. However, the savings clause contained in Section 5.05(3), which provides that crimes committed under the old law must be "punished" according to that law, is inapplicable to the instant situation. This case does not involve a question of punishment. The now repudiated policy of former Sections 483-a and 2189-a was manifestly not punishment but preventive detention and treatment in lieu of the prescribed punishment.

In any event, any application of the savings clause would be limited to the imposition of the indefinite sentence and should have no bearing on its continued application to deprive Larry Hayden of his liberty beyond the maximum definite term prescribed by statute. His continued indefinite commitment requires periodic review and psychiatric reports under New York law, see People v. Bailey, 21 N.Y.2d at 597, and as a matter of constitutional law, see United States ex rel. Schuster v. Herold, 410 F.2d 1071, 1084 (2d Cir. 1969). Each such review in effect results in a new determination that his criminal incarceration should continue indefinitely. The Supreme Court has made it clear that, whatever justification might exist for an initial commitment of this sort, each determination to continue

such a classification must be considered as an independent proceeding which, under Specht v. Patterson, supra, requires an independent determination. Humphrey v. Cady, 405 U.S. at 511. Accordingly, under the rationale of Bradley v. United States, 410 U.S. 605 (1973), the savings clause contained in Section 5.05(3) is inapplicable to such determinations.

In Bradley the Court held, as a matter of statutory construction, that repeal by the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. § 801 et seq.) of statutory prohibitions in drug cases against certain judicial sentence modifications--specifically, suspension of sentence and parole--did not effect a repealer respecting crimes committed prior to the passage of the Act. The Court reasoned that the savings clause was applicable since the prosecution of such crimes was not at an end until sentence was imposed. The majority indicated, however, that the effect of the repeal on general administrative parole by the parole board (pursuant to 18 U.S.C. §4202) "is a rather different matter", and while expressing no opinion, noted that the grant of administrative parole is a proceeding separate from the sentencing. 410 U.S. at 611 and n.6. This Court, taking note of the Bradley decision, made the same observation as to administrative parole. United States v. Fuguet, 481 F.2d 888 (2d Cir. 1973). The Court of Appeals

for the Fourth Circuit has unequivocally rejected the discrimination inherent in the kind of timing discrimination being applied by New York to Larry Hayden:

> "The contention of the Board, if sustained, would mean that federal prisoners, convicted of the same offense, would, as a matter of law, be treated differently in connection with the service of their sentences dependent upon whether their offense occurred before or after May 1, 1971. This contention is predicated on what the Board conceived to have been Congressional intent in enacting the new Act. Congressional intent to achieve such an irrational and manifest discrimination in treatment between prisoners convicted of the same offense, so inconsistent with fundamental fairness, should not be assumed, unless compelled by clearly expressed legislative purpose. We find no such expression of legislative intent in the Act.
>
> * * * * *
>
> "It is obvious that Congress, in removing the ban on administrative parole for narcotic law offenders in the Comprehensive Act of 1970, was expressing a legislative judgment that an intelligent program of rehabilitation, in which administrative parole should be an available tool, was the preferred method of dealing with such offenders. If that was the Congressional purpose, it is difficult to find any basis in that Act, much less in reason or in fairness, for treating differently prisoners whose narcotic law offenses took place before May 1, 1971 from those whose offenses occurred after that date. We will not assume that Congress intended any such irrational purpose or intent." Alvarado v. McLaughlin, 486 F.2d 541, 543-545 (4th Cir. 1973), appeal pending.

See also, United States ex rel. Marrero v. Warden, 483 F.2d 656 (3d Cir. 1973), cert. granted, 42 U.S.L.W. 3386 (U.S., January 7, 1974) (No. 73-831). To deny Larry Hayden the benefit of New York's changed policy resulting in the elimination

of indefinite sentences is, we submit, likewise "an irrational and manifest discrimination in treatment between prisoners convicted of the same offense, so inconsistent with fundamental fairness ...." 486 F.2d at 543. New York has no legitimate or rational policy basis for making the artificial distinction between persons who commit crimes before or after a certain date. The consequence of that artificial distinction is that an individual convicted after September 1967 of the same crime as Larry Hayden has either been paroled or with good time credit has completed his sentence. Larry Hayden, who committed the same crime in 1964, remains incarcerated in a criminal institution solely because of the date of the crime. Such an arbitrary classification is manifestly contrary to the fundamental principle of equal protection of the laws.

CONCLUSION

For the foregoing reasons, the order of the District Court should be reversed and the case remanded for the issuance of a writ of habeas corpus.

Respectfully submitted,

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APPENDIX

OPINION OF THE COURT BELOW

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel.
LARRY DAVID HAYDEN

v.

JOHN R. ZELKER

MEMORANDUM AND ORDER

72-C-909

Submitted:
Larry David Hayden, pro se

COSTANTINO, District Judge

Petitioner was found guilty of one count of carnal abuse and endangering the life of a child and was sentenced on November 20, 1964 in the County Court of Suffolk County to a term of imprisonment of one year to life, pursuant to section 483-a of the New York Penal Law of 1909 as amended. On December 27, 1968, petitioner was granted a writ of coram nobis to the extent that the prison sentence of November 20, 1964 was vacated and petitioner was sentenced nunc pro tunc pursuant to People v. Bailey, 21 N.Y.2d 588 (1968) to the same sentence he received in 1964.

Petitioner claims that his resentence under the

old penal law was constitutionally defective since at that time New York's Revised Penal Law, which provided for a greatly reduced sentence, had gone into effect.

Section 5.05(3) of the Revised Penal Law, however, reads as follows:

> The provisions of this chapter do not apply to or govern the construction of any punishment for any offense committed prior to the effective date of this chapter. . .. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this chapter had not been enacted. N.Y. Penal L. § 5.05(3)(McKinney 1967).

The claim that the above section of law is unconstitutional, having the effect of invidiously discriminating against a class of felons is without merit. Indubitably New York State has the power to have its statutory changes applicable only to future conduct. United States v. Fiotto, 454 F.2d 252 (2d Cir. 1972); United States v. Kirby, 176 F.2d 101 (2d Cir. 1949); see United States ex rel. Cooper v. Zelker, 339 F.Supp. 410 (S.D.N.Y. 1972)(Weinfeld, J.).

Accordingly, petitioner's application for a writ of habeas corpus is denied.

U. S. D. J.

GENERAL DOCKET ENTRIES

72C 909 U.S.A., ex rel. LARRY DAVID HAYDEN v. JOHN R. ZELKER, etc.

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED EMOLUMENT RETURNS
7/6/72	Petition for writ of habeas corpus filed.	1JS5
7-21-72	BY COSTANTINO, J. ORDER TO SHOW CAUSE FILED (1) The Atty., Gen., State of N.Y., to show cause why a writ of habeas corpus should not be issued; (2) Within 30 days of receipt of this order, the Atty., Gen., State of N.Y., shall serve a copy of his return on the petitioner herein and file the original thereof with the Clerk of Court, with proof of such service, etc. (See order)	2
7-24-72	Copy of letter of Clerk of Court filed dated July 24, 1972 addressed to Mr. Larry David Hayden re enclosure of a copy of order to show cause, etc.	3
7-24-72	Copy of letter of Clerk of Court filed dated July 24, 1972 addressed to Hon. Louis J. Lefkowitz, Atty., Gen., State of N.Y., re enclosure of a copy of order to show cause, etc.	4
8/9/72	Letter addressed to J. Rosling filed. (August 3, 1972)	5
8-21-72	Affidavit of Benton J. Levy, Assistant Atty.,Gen., filed in opposition, etc.	6
10-10-72	Letter of relator herein filed dated Oct. 3, 1972 and reply filed from Clerk of Court dated Oct. 10, 1972 addressed to Mr. Larry Hayden re his letter dated Oct. 3, 1972, etc.	7 & 8
4- 16-73	Letter of relator filed dated April 10, 1973 together with a reply from Clerk of Court, dated noting change of address,etc.	9 & 10
4-19-73	BY COSTANTINO, J. MEMORANDUM and ORDER FILED. PETITIONER'S APPLICATION FOR A WRIT OF HABEAS CORPUS is DENIED. (See Memo.,etc.)	11
3-29-74	BY COSTANTINO, J. MEMORANDUM and ORDER FILED. The relator is granted leave to proceed in forma pauperis and a certificate of probable cause.	12

A TRUE COPY
ATTEST
DATED April 5, 1974
Frank V. [illegible]
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DEPARTMENT OF LAW

MAY 30 1974

NEW YORK CITY OFFICE

Louis J. Lefkowitz

ATTORNEY GENERAL